

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CHICAGO REGIONAL COUNCIL OF
CARPENTERS PENSION FUND, CHICAGO
REGIONAL COUNCIL OF CARPENTERS
WELFARE FUND, the CHICAGO AND
NORTHEAST ILLINOIS REGIONAL COUNCIL
OF CARPENTERS APPRENTICE AND TRAINEE
PROGRAM FUND, and

MARTIN C. UMLAUF, JEFFREY ISAACSON,
FRANK T. LIBBY, JOSEPH PASTERINO,
KEITH JUTKINS, RICHARD A. BAGGIO,
BENJAMIN A. JOHNSTON, J. DAVID PEPPER,
THOMAS S. RAKOW, and PAUL R. HELLERMAN
as Trustees of the CHICAGO REGIONAL COUNCIL
OF CARPENTERS PENSION AND WELFARE FUND,

MARTIN C. UMLAUF, JEFFREY ISAACSON,
BRUCE A. NELSON, FRANK T. LIBBY, C. DAVID
PEPPER, RICHARD A. BAGGIO, WILLIAM E. O'NEIL,
AND ROBERT J. CORRIGAN, as Trustees of the
CHICAGO REGIONAL COUNCIL OF CARPENTERS
APPRENTICE & TRAINEE PROGRAM,

Plaintiffs,

v.

UNITED INTERIOR CONSTRUCTION, INC. and
DRIVE CONSTRUCTION, INC.

Defendants.

FILED: JUNE 18, 2008
08CV3496
JUDGE LEINENWEBER
MAG. JUDGE VALDEZ
J. N.
CIVIL ACTION

Case No.

COMPLAINT

Plaintiffs, the CHICAGO REGIONAL COUNCIL OF CARPENTERS PENSION FUND,
et al., by their attorneys, Whitfield McGann & Ketterman, complain of the Defendants, UNITED
INTERIOR CONSTRUCTION, INC., et al., as follows:

1. This action arises under Section 502 of the Employee Retirement Income Security Act and Section 301 of the Taft-Hartley Act. (29 U.S.C. §§1132 and 185). Jurisdiction is founded on the existence of questions arising thereunder.

2. The Chicago Regional Council of Carpenters Pension Fund, the Chicago Regional Council of Carpenters Welfare Fund and the Chicago Regional Council of Carpenters Apprentice and Trainee Program ("Trust Funds") receive contributions from numerous employers pursuant to Collective Bargaining Agreements between the employers and the Chicago Regional Council of Carpenters ("Union"), and therefore, are multiemployer plans. (29 U.S.C. §1002). The Trust Funds are administered at 12 East Erie, Chicago, Illinois and venue is proper in the Northern District of Illinois.

3. United Interior Construction, Inc. is an employer engaged in an industry affecting commerce which entered into an Agreement in January 2000 whereby it agreed to be bound by a Collective Bargaining Agreement whose terms require Defendant to pay fringe benefits to the Trust Funds.

4. Drive Construction, Inc. is an employer engaged in an industry affecting commerce which entered into an Agreement in February 2007 whereby it agreed to be bound by a Collective Bargaining Agreement whose terms require Defendant to pay fringe benefits to the Trust Funds. Prior to signing the Agreement, the plaintiffs believe that Drive Construction, Inc. acted as a disguised continuance of United Interior Construction, Inc. and/or participated with United Interior Construction, Inc. in avoiding its Trust Fund obligations.

5. Drive Construction, Inc. is the alter ego of United Interior Construction, Inc. or is bound to the Collective Bargaining Agreement for the period of July 2004 through January 2007 under a single or joint employer theory, as such, plaintiffs are entitled to compliance from the related entity to the terms of the Collective Bargaining Agreement and Trust Agreements.

6. The Collective Bargaining Agreements also bind United Interior Construction, Inc. and Drive Construction, Inc. to the provisions of the Agreement and Declarations of Trust that created the Trust Funds ("Trust Agreements").

7. United Interior Construction, Inc. and Drive Construction, Inc. are required to make contributions to the Trust Funds for each hour worked by their carpenter employees at the rate and in the manner specified in the Collective Bargaining Agreements and Trust Agreements. In addition, the Defendants are required to make contributions to the Trust Funds measured by the hours worked by subcontractors that are not signatory to a Collective Bargaining Agreement with the Union.

8. Pursuant to the provisions of the Trust Agreements and the Collective Bargaining Agreements, United Interior Construction, Inc. and Drive Construction, Inc. are required to provide access to the records necessary for the Trust Funds to determine whether there has been compliance with the obligation to contribute to the Trust Funds.

9. United Interior Construction, Inc. and Drive Construction, Inc. breached the provisions of the Collective Bargaining Agreement by failing to allow Plaintiffs to complete an audit of Defendants' books and records for the period July 2004 through January 2007, after demand for audit was made upon United Interior Construction, Inc. and Drive Construction, Inc.

10. In particular, United Interior Construction, Inc. and Drive Construction, Inc. refuse to provide access to the books and records set forth in Attachment A to this Complaint.

11. The review of the books and records provided by United Interior Construction, Inc. indicate that the Employer owes the Trust Funds at least \$15,486.85 in delinquent contributions for the Audit Period. The Trust Funds reasonably believe that the production of the outstanding records set forth in Attachment A to this Complaint will result in the determination that more delinquent contributions are owed.

12. Plaintiffs have been required to employ the undersigned attorneys to compel the audit of the Defendants' books and records.

13. United Interior Construction, Inc. and Drive Construction, Inc. are obligated to pay the attorney and auditor fees and court costs incurred by the Plaintiffs pursuant to the Collective Bargaining Agreements, the Trust Agreements and/or 29 U.S.C. §1132(g)(2)(D).

14. According to the Collective Bargaining Agreement, the Trust Agreements and/or 29 U.S.C. §1132(g), United Interior Construction, Inc. and Drive Construction, Inc. are obligated to pay any fringe benefit contributions shown to be due upon completion of the audit, as well as liquidated damages and interest.

15. Pursuant to 29 U.S.C. §1132(g)(2), Plaintiffs are entitled to an amount equal to the greater of:

- (a) double interest; or
- (b) interest plus liquidated damages.

WHEREFORE, Plaintiffs pray:

- A. That the Defendants, United Interior Construction, Inc. and Drive Construction, Inc., be required to provide access to their books and records within ten (10) days for the period of July 2004 through January 2007.
- B. That United Interior Construction, Inc. and Drive Construction, Inc. be ordered to pay all contributions shown to be due upon completion of the audit.
- C. That United Interior Construction, Inc. and Drive Construction, Inc. be ordered to pay the attorney and auditor fees and costs incurred by the Plaintiffs.

- D. That United Interior Construction, Inc. and Drive Construction, Inc. be ordered to pay liquidated damages and interest.
- E. That Plaintiffs have such other and further relief as by the Court may be deemed just and equitable all at the Defendant's cost.

Respectfully Submitted,

CHICGAO REGIONAL COUNCIL OF
CARPENTERS PENSION FUND et al.

s/Travis J. Kettermann

By: TRAVIS J. KETTERMAN

Attorney for Plaintiffs
Whitfield McGann & Ketterman
111 East Wacker Drive, Suite 2600
Chicago, Illinois 60601
312/ 251-9700

James Egan & Associates, Ltd.

Certified Public Accountants and Consultants

Employer: United Interior Construction, Inc.

AC# 22024 & 50588

Date 02/26/08

Trust Fund: CRCC

To date we have not been provided with the records listed below. **Please forward copies of the items requested (✓) below to our office as soon as possible.** If you have any questions, or are unable to comply with this request, please contact us at (708) 361-2050 Ext 189. While we anticipate that our review of these records will allow us to complete this engagement, **occasionally these records may warrant an examination of additional records.**

Please return a copy of this form with the records, and **place a (✓) next to the item(s) being provided.** Thank you for your cooperation

PAYROLL FOR: United Interior Construction, Inc.

Requested		For the Period(s)	Provided
✓	Quarterly Illinois Unemployment Wage Reports (UI 3/40)	4 th Quarter 2005 through Present	
	Quarterly Unemployment Tax Reports for Other States		
✓	Quarterly Federal Tax Returns (Forms 941)	4 th Quarter 2005 through Present	
	Federal Unemployment Report (Forms 940 or 940 EZ)		
✓	Wage and Tax Statements (Forms W-2)	2005 through Present	
✓	Transmittal of Income and Tax Statements (Forms W-3)	2005 through Present	
✓	Records of payroll transactions commonly known as: Payroll Check Registers (by check no., date, etc.), Payroll Journals, Individual Earnings Records, etc.	Check Dates: 02/15/06, 02/22/06, 5/12/06, 11/05/04, 12/08/04, all 2007	
	Time Cards		
	Bank Statements & Cancelled Checks for <u>ALL</u> Payroll A/Cs		
	Monthly Contribution Reports to Other Trust Funds		
	Employee Information Request form(s)		

CASH DISBURSEMENTS / CONSTRUCTION LOANS FOR: United Interior Construction, Inc.

Requested		For the Period(s)	Provided
	Vendor Listing		
✓	Records of cash disbursed commonly known as: Check Registers/Stubs/Vouchers (check no, date, etc.), Cash Disbursement Journals, etc.	July 2004 through Present	
	General Ledgers		
✓	Cancelled Checks for <u>ALL</u> General A/Cs	Those included with Closing Bank Statement.	
✓	Complete Bank Statements for <u>ALL</u> General A/Cs	Closing Bank Statement	
	Summary of Information Returns (Forms 1096)		
	Reports of Miscellaneous Income Payments (Forms 1099)		
	Subcontractors' Workers Compensation Endorsements		
	Payment Information Request form(s)		

OTHER RECORDS FOR: United Interior Construction, Inc.

Requested		For the Period(s)	Provided
	Annual Workers Compensation Insurance Audit Reports		
✓	Income Tax Return(s)	2005 through 2007	
	Additional Information	See Attached	

Requested By: Delfino Unzueta

James Egan & Associates, Ltd.

Certified Public Accountants and Consultants

Employer: Drive Construction, Inc. AC# 24377

Date 02/26/08

Trust Fund: CRCC

To date we have not been provided with the records listed below. **Please forward copies of the items requested (✓) below to our office as soon as possible.** If you have any questions, or are unable to comply with this request, please contact us at (708) 361-2050 Ext 189. While we anticipate that our review of these records will allow us to complete this engagement, **occasionally these records may warrant an examination of additional records.**

Please return a copy of this form with the records, and place a (✓) next to the item(s) being **provided**. Thank you for your cooperation

PAYROLL FOR: Drive Construction, Inc.

Requested		For the Period(s)	Provided
✓	Quarterly Illinois Unemployment Wage Reports (UI 3/40)	3 rd Quarter 2004 (or initial return) through 4 th Quarter 2006	
	Quarterly Unemployment Tax Reports for Other States		
✓	Quarterly Federal Tax Returns (Forms 941)	3 rd Quarter 2004 (or initial return) through 4 th Quarter 2006	
	Federal Unemployment Report (Forms 940 or 940 EZ)		
	Wage and Tax Statements (Forms W-2)		
	Transmittal of Income and Tax Statements (Forms W-3)		
✓	Records of payroll transactions commonly known as: Payroll Check Registers (by check no., date, etc.), Payroll Journals, Individual Earnings Records, etc.	July 2004 through December 2006	
	Time Cards		
	Bank Statements & Cancelled Checks for <u>ALL</u> Payroll A/Cs		
	Monthly Contribution Reports to Other Trust Funds		
	Employee Information Request form(s)		

CASH DISBURSEMENTS / CONSTRUCTION LOANS FOR: Drive Construction, Inc.

Requested		For the Period(s)	Provided
	Vendor Listing		
✓	Records of cash disbursed commonly known as: Check Registers/Stubs/Vouchers (check no, date, etc.), Cash-Disbursement Journals, etc.	July 2004 through January 2007	
	General Ledgers		
✓	Cancelled Checks for <u>ALL</u> General A/Cs	Those included with Opening Bank Statement	
✓	Complete Bank Statements for <u>ALL</u> General A/Cs	Opening Bank Statement	
	Summary of Information Returns (Forms 1096)		
	Reports of Miscellaneous Income Payments (Forms 1099)		
	Subcontractors' Workers Compensation Endorsements		
	Payment Information Request form(s)		

OTHER RECORDS FOR: Drive Construction, Inc.

Requested		For the Period(s)	Provided
	Annual Workers Compensation Insurance Audit Reports		
✓	Income Tax Return(s)		
✓	Additional Information	Franchise Fee Payment Information 2005 & 2006.	

Requested By: Delfino Unzueta